

May 22, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Pelgas, Inc.
Date of Filing: April 24, 2007
Case No.: TEE-0046

On April 24, 2007, Pelgas, Inc. (Pelgas) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be permanently relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that the request should be denied.

I. Background

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.¹ The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.²

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, propane, and residual fuel oil. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B. Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as certainty firms, are always included in the sample of firms required to file the form. A random sample of other firms, designated as non-certainty firms, is also selected. This random sample changes

¹ 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

² See H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample. In order to reduce the burden on reporting firms, EIA also permits the firms to rely on reasonable estimates.³

II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.”⁴ Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.⁵ Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief.⁶ If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA’s statistical sample will be unreliable.⁷

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability;⁸ the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;⁹ extreme or unusual circumstances disrupt a firm’s activities;¹⁰ or a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.¹¹

³ Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

⁴ 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

⁵ *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

⁶ *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

⁷ *Id.*

⁸ *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,206 (1987) (firm in bankruptcy).

⁹ *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,203 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist).

¹⁰ *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm’s records inaccessible).

¹¹ *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

III. The Application for Exception

Pelgas is a seller of petroleum products based in Atlantic, Iowa. Pelgas is designated as a non-certainty firm by the EIA.¹² The firm, reporting in its first sample, has filed form EIA-782B from August 2004 to the present.¹³ In its Application, Pelgas requests that it be permanently relieved of the obligation to file Form EIA-782B.¹⁴ Based upon a review of the Application, we concluded that there was not sufficient information to permit us to act favorably on the request. Therefore, we contacted Pelgas to give the company an opportunity to discuss its request for relief.¹⁵ Pelgas maintains that the firm has reported long enough and that another firm should be selected to report in its place.¹⁶ Pelgas also maintains that the firm was told that its obligation to file Form EIA-782B would last 24 months and that Pelgas has been filing longer than 24 months.¹⁷

IV. Analysis

The Form EIA-782B reporting requirement requires common information on pricing and inventory changes for various refined petroleum products. The EIA estimates that it should normally take a firm approximately two and one-half hours per month to complete the form.¹⁸ As mentioned above, the burden of the requirement can be substantially reduced by the use of estimates.¹⁹

Every reporting firm is burdened to a certain extent by the reporting requirement. Exception relief is appropriate only where the reporting requirement poses a serious hardship, inequity, or unfair distribution of burdens.²⁰ In other words, relief is appropriate where the reporting requirement adversely affects the firm to a significantly greater degree than it affects other firms.

In this case, Pelgas does not claim it is adversely affected by the reporting requirement to a greater degree than other similar firms. To the contrary, the company's president stated that it takes him approximately one hour each month to complete the form, significantly less than EIA's estimated time.²¹ Pelgas bases its request for relief on the grounds that it has filed Form EIA-782B since August 2004, contending that it is unfair that Pelgas should be required to file beyond 24 months. We have consistently held that the length of time that a firm has been required to file an EIA form does not alone constitute grounds for exception relief.²² Pelgas'

¹² See Memorandum of Telephone Conversation between Tammy Heppner, EIA, and Diane DeMoura, OHA (April 18, 2007).

¹³ *Id.*

¹⁴ See Application for Exception.

¹⁵ See Memorandum of Telephone Conversation between Todd Pellett, Pelgas, and Diane DeMoura, OHA (May 8, 2007).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ See Section 10 of General Instructions to Form EIA-782B.

¹⁹ See Section 7 of the General Instructions for Form EIA-782B.

²⁰ 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

²¹ See Memorandum of Telephone Conversation between Todd Pellett and Diane DeMoura (May 8, 2007).

²² See *Sound Oil Co.*, 25 DOE ¶ 81,006 (1994) (company had filed for ten years); *Halron Oil Co.*, 16 DOE ¶ 81,001 (1987) (12 years).

assertion that it is unfair that it should continue to be required to file Form EIA-782B, absent any showing of serious hardship, inequity, or unfair distribution of burdens, is insufficient to warrant relief.

As the foregoing indicates, Pelgas has not shown that the requirement to complete Form EIA-782B is burdensome to the firm in a manner that distinguishes it from other similarly affected firms. Accordingly, we find that exception relief is not warranted in this case and, therefore, the Application for Exception should be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Pelgas, Inc., Case No. TEE-0046, be, and hereby is, denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denied of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 835, Subpart J.

Fred L. Brown
Acting Director
Office of Hearings and Appeals

Date: May 22, 2007